



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Webb Electric Company of Florida, Inc.
File: B-223980
Date: December 19, 1986

DIGEST

Procuring agency took reasonable steps to obtain competition under the Competition in Contracting Act, when it mailed solicitations to 79 firms, notwithstanding objections against failure to extend bid opening by 7 firms which received solicitation 8 days before opening, because the agency contacted other bidders to assure they received the solicitation and six potential bidders were present for the pre-bid site visit.

DECISION

Webb Electric Company of Florida, Inc. (Webb), protests bid opening under invitation for bids (IFB) No. N62471-84-B-1300, issued by the Officer in Charge of Construction, Naval Facilities Engineering Command (Navy), for improvements to the electrical distribution system at the Pearl Harbor Naval Shipyard, Hawaii. Webb contends that the Navy's refusal to postpone bid opening improperly precluded it from competing for the contract.

We deny the protest.

The solicitation was issued on July 14, 1986, with an estimated value of over \$10,000,000. Bid opening was August 15, 1986, and the Navy received one bid from Fischbach & Moore International Inc., and Fritz of Hawaii, Inc., at the bid price of \$13,934,865.

Webb advises that the Navy issued a presolicitation notice on April 15, 1986, which Webb returned to the Navy indicating that it intended to bid as a prime contractor and requested one set of the solicitation documents. Webb learned from one of its regular suppliers on August 5, 1986, that the bid opening had been scheduled for August 15. In addition, Webb states that it also learned that several other companies in

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the Florida area had not received the solicitation package as requested. Webb contacted the Navy on August 5 to request a copy of the solicitation and to seek a postponement of the bid opening date. The Navy advised that the solicitation was sent to bidders on July 14, 1986, and that the bid opening date would not be postponed. Webb followed up the telephone conversation with a written request for an extension by letter dated August 6, 1986, in which Webb reiterated that it had not received a copy of the solicitation and listed other companies that had not received a copy of the solicitation. Within the next 2 days, the Navy also received letters from two other companies which also requested postponement of the bid opening because they had not received a copy of the solicitation and were still interested in bidding. Webb ultimately received the solicitation on August 7, but the Navy again denied its request for an extension of the bid opening date on August 14. The record shows that Webb advised the Navy that five other companies had requested but not received a copy of the solicitation when it requested postponement of the bid opening on August 6.

The Navy reports that the solicitation and 5 amendments were sent to 53 firms on the bidder's mailing list, including Webb and 25 other firms which specifically requested the solicitation, between the date that the solicitation was issued and August 4, 1986. The Navy reports that neither the solicitation nor the amendments sent to Webb were returned to the Navy. Further, the Navy advises that after receiving Webb's request for postponement of the bid opening, it randomly telephoned firms that were sent a copy of the solicitation in different parts of the United States, and they all indicated that the solicitation package was received on time. The Navy states that six firms located in Hawaii, California, and Texas attended the site visit on August 8, 1986. In view of these facts, the Navy contends that it was justified in denying Webb's request to postpone the bid opening. Moreover, the Navy indicated that a ruling in favor of the protester would create an affirmative duty to extend bid opening whenever 10 percent of the potential bidders notified the government that they had not received the solicitation.

After April 1, 1985, the effective date of CICA, the act requires procuring agencies to obtain "full and open" competition. See 10 U.S.C. § 2301(a)(1), 2302(2), 2304(a)(1)(A), and 2305(a)(1)(A)(i). "Full and open" competition is defined as meaning that "all responsible sources are permitted to submit sealed bids or competitive proposals on the procurement." Congress established "full and open competition" as the requirement for awarding contracts because of a strong belief that the procurement

process should be open to all capable contractors who want to do business with the government. See House Conference Rep. No. 98-861, 98th Cong., 2d. Sess. 1422 (June 23, 1984). In view of such a clear statement of the government's policy and the clear expression of Congress' intent that a new procurement standard -- "full and open" competition -- govern, we must carefully scrutinize the allegation that a particular contractor has not been provided an opportunity to compete for a particular contract, taking into account all of the circumstances surrounding the contractor's nonreceipt of the solicitation, as well as the agency's explanation. Dan's Moving & Storage, Inc., B-222431, May 28, 1986, 86-1 C.P.D. ¶ 496.

Webb states that the Navy continued to enforce the scheduled bid opening date despite the fact that (1) there was no urgency attached to the procurement, (2) it involves over \$10 million of complex electrical work, (3) the project is located in Hawaii, and (4) the Navy was aware of earlier problems experienced with mailing between Hawaii and the mainland.

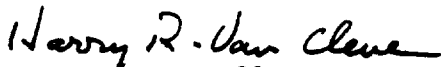
In NRC Data Systems, 65 Comp. Gen. _____, B-222912, July 18, 1986, 86-2 C.P.D. ¶ 84, we stated that although the CICA standard of full and open competition requires an agency to take reasonable steps to ensure that a procurement is open to all responsible sources, that requirement should not be read so broadly as to require an agency either to accept a late submission or to resolicit whenever the agency contributes to a prospective contractor's failing to receive solicitation materials in a timely manner. If it was so read, it would be inefficient from the government's perspective and the integrity of the system would be undermined if other bidders could not rely on the finality of bid or proposal closing dates. Thus, we found that an agency has satisfied CICA's full and open competition requirement when it makes a diligent, good-faith effort to comply with the statutory and regulatory requirements regarding notice of the procurement and distribution of the solicitation materials, and it obtains a reasonable price.

In this case we think the Navy did make a diligent good faith effort at notice and distribution of the solicitation. When the Navy received Webb's telephone call and letter concerning the procurement, it contacted other bidders on the mainland to determine if they had timely received the bid package. All firms contacted responded that they had. Moreover, six firms attended the site visit the next day. These facts, in conjunction with the mailing of the solicitation to 79 firms,

support the conclusion that the Navy was diligent and made a good faith effort to obtain competition.

Accordingly, we deny the protest.

However, we note that the Navy still has the authority to review the reasonableness of the low bid received and could reject it if it is found unreasonable as to price.


Harry R. Van Cleve
General Counsel